

SENATE BILL REPORT

2ESHB 1553

As Reported by Senate Committee On:
Law & Justice, February 26, 2016

Title: An act relating to certificates of restoration of opportunity.

Brief Description: Encouraging certificates of restoration of opportunity.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Walkinshaw, MacEwen, Ryu, Appleton, Moscoso, Holy, Gregerson, Zeiger, Peterson, Farrell, Walsh, Reykdal, Orwall, Pettigrew, Tharinger, Fitzgibbon and Kagi).

Brief History: Passed House: 3/02/15, 97-0; 2/16/16, 97-0.

Committee Activity: Law & Justice: 3/19/15; 2/23/16, 2/26/16 [DP].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Frockt, Pearson and Roach.

Staff: Lindsay Erickson (786-7465)

Background: Occupational Licensure. Occupation licensure is the process by which a government entity grants individuals permission to engage in a specified professional occupation upon finding that individual applicants have attained the minimal degree of competency required to ensure that the public's health, safety, and welfare will be reasonably well protected. Currently, there are at least 120 types of occupations requiring licensing, certification, and registration in Washington State. Some occupational licensure procedures require state entities to conduct criminal background investigations and assess or exclude someone from licensure for certain types of criminal convictions.

Employment and Licensing Disqualification for Felony Convictions. Any state, city, county, or other municipal entity is prohibited from disqualifying a person from employment, or any occupation, trade, vocation, or business for which a state or local license, permit, certificate or registration is required solely because of a prior conviction of a felony. However, this does not preclude the fact of any prior conviction of a crime from being considered.

The following exemptions allow for disqualification solely based on criminal history:

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- if the felony is directly related to the employment or profession sought and it has been fewer than 10 years since conviction;
- if the felony was for embezzlement or theft and the position is in a county treasurer's office;
- if the felony was committed against a child and the position is an education position requiring certification or is a position with a school district or educational service district; and
- health professions are exempt from the prohibition on disqualification.

Summary of Bill: The Certificate of Restoration of Opportunity (CROP) is created.

Eligibility Requirements. A person may obtain a CROP from a superior court if the person meets certain eligibility requirements. Specific time periods must have passed since sentencing, for those sentenced to probation or some other noncustodial sentence, or since release from confinement, for those sentenced to jail or prison, before a person is eligible for a CROP. The time periods are as follows:

- one year for misdemeanors and gross misdemeanors when sentenced to probation or some other noncustodial sentence;
- 18 months for misdemeanors and gross misdemeanors when sentenced to a term of confinement;
- two years for a class B or C felony; or
- five years for a violent offense.

An applicant must be in compliance with or have completed all sentencing requirements, including legal financial obligations. An applicant is not eligible if the applicant has any new arrests, convictions, or pending criminal charges or known imminent charges, or is required to register as a sex offender. An applicant is not eligible if the applicant has ever been convicted of any of the following:

- a class A felony, an attempt to commit a class A felony, or criminal solicitation of or criminal conspiracy to commit a class A felony;
- a sex offense;
- a crime that includes sexual motivation;
- Extortion in the first degree;
- Drive-by Shooting;
- Vehicular Assault; or
- Luring.

Occupational Licensing and Qualifications. When a qualified applicant holds a CROP and meets all other statutory or regulatory requirements, the state and any county, municipal department, board, officer, or agency may not disqualify him or her for a license, certificate of authority, or qualification to engage in the practice of any profession or business solely based on the applicant's criminal history. The state and other government entities are immune from suit for damages based on the exercise of any discretion with respect to CROPs.

The Department of Social and Health Services (DSHS) and the Department of Health (DOH) have discretion to disqualify an individual who holds a CROP based solely on criminal history if the employment involves unsupervised access to vulnerable adults, children, or

individuals with mental illness or developmental disabilities. The DSHS and the DOH are immune from suit for damages based on the exercise of this discretion.

Certain professional licenses are not covered by a CROP, including the following: accountants; assisted living facilities employees; bail bond agents; escrow agents; long-term care workers; nursing home administrators; nurses; physicians and physician assistants; private investigators; receivers; teachers; notaries public; private investigators; real estate brokers and salespersons; security guards; and vulnerable adult care providers. Criminal justice agencies and the Washington State Bar Association are exempt and may disqualify an individual based solely on criminal history, regardless of whether the individual holds a CROP.

Employment and Housing. An employer or housing provider has the discretion to consider a CROP in making employment or housing decisions and is immune from suit for damages based on the exercise of this discretion. Evidence of a crime for which a CROP has been issued is inadmissible in court for actions alleging negligence or intentionally tortious conduct of an employer or housing provider with respect to the employment or housing of a CROP holder.

Court Records. A qualified court has jurisdiction to issue a CROP to a qualified applicant. A court must determine, in its discretion, whether the certificate applies to all past criminal history or applies only to the convictions or adjudications in the jurisdiction of the court. The CROP does not apply to any future criminal justice involvement that occurs after the certificate is issued. A CROP has no effect on any other court records, including records in the judicial information system.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This significant piece of legislation reflects an important step forward to creating opportunities for people to get back on their feet after incarceration. The bill as currently drafted is the right step to be taking this year; we can always come back to this and assess what we are finding. This is the first bill to really take care of collateral consequences of incarceration and helps people who want their pre-offense lives back. When someone gets a CROP, it is similar to having a receipt to prove they have paid their debt to society and now have earned the ability to apply for a professional license because they have done everything that the judge has asked. Only the most highly-motivated offenders in society will be applying for a CROP, and these are the people we should be trying to help. Once someone has served time, they should have the opportunity to re-enter society and become valuable citizens. There was a previous concern regarding liability of businesses, but the concerns have been addressed in this version. Businesses should be able to hire the qualified candidates they want to employ, even if the person to be hired has a criminal record.

Persons Testifying: PRO: Representative Walkinshaw, Prime Sponsor; Dan Satterberg, King Co. Prosecuting Atty./WA Assoc. of Prosecuting Attys.; Bill Hinkle, Rental Housing Assoc.; Bob Battles, Assoc. of WA Business; Dave Murphy, King Co. Diversion & Reentry Services; Shayne Rochester, Evergreen Manor Treatment.

Persons Signed In To Testify But Not Testifying: No one.